

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

In Re
SPOKANE RACEWAY PARK, INC.

DEBTOR.

NO. CV-10-0106-LRS

(Bankruptcy Case No. 06-01966-
PCW11; Adversary No. 07-80100)

JOHN MUNDING, in his capacity
as Chapter 11 Trustee and on
behalf of Spokane Raceway
Park, Inc., as Debtor,

Appellee,

v.

ORRVILLE MOE, an individual,

Appellant.

**ORDER GRANTING APPELLEE'S
MOTION TO DISMISS APPEAL**

BEFORE THE COURT is Appellee's Motion to Dismiss Appeal and Motion to Expedite (Ct. Rec. 15) filed July 19, 2010. On July 23, 2010, the Court granted the motion to expedite portion of the motion and set a briefing schedule for Appellee's motion to dismiss.

The motion to dismiss filed by Appellee arises principally from Appellant's alleged failure to comply with the applicable Rules of Appellant Procedure, causing substantial harm to the estate and its creditors. More specifically, Appellee argues that Appellant failed to

1 comply with FRBP 8009 and LR 83.5(b)(3)(b). Appellee urges this Court
2 to dismiss this appeal due to Appellant's failure to follow applicable
3 rules of appellate procedure, failure to follow Court Orders, and failure
4 to identify a single issue of error to justify supporting his actions in
5 filing this appeal. Ct. Rec. 22.

6 Appellant responds that he has five appeals pending before the
7 United States District Court, Eastern District of Washington, including
8 this appeal. This includes one appeal pending before the Honorable Judge
9 Robert H. Whaley (Case No. CV-10-066-RHW), an appeal pending before the
10 honorable Judge Rosanna M. Peterson (Case No. CV-10-146-RMP), and two
11 appeals pending before the Honorable Judge Justin L. Quackenbush (Case
12 no. 09-0358-JQJ and Case No. 09-0379-JLQ). Appellant indicates that he
13 is awaiting a decision based on his motion for the Court to approve the
14 removal of the Bankruptcy case (from which all these appeals purportedly
15 stem) in Case No. CV-10-146-RMP. Appellant recognizes he should have
16 filed his Brief in this case within 40 days or by July 12, 2010, but
17 states the reason for the delay lies in the reliance on anticipation of
18 an early ruling in Judge Peterson's case. As Appellee has noted in the
19 reply brief filed herein (Ct. Rec. 22), Appellant's response utterly
20 fails to address the underlying procedural or substantive reasons for the
21 appeal.

22 The Court finds that the motion to dismiss should be granted. The
23 primary argument of appellant's counsel is that he is waiting to see how
24 other judges rule within this district on other filed cases. Counsel
25 for Appellee indicates that the Order Confirming the Plan of
26 Reorganization ("Order Confirming Plan") was entered on March 16, 2010.

1 By filing this appeal, Appellant has delayed distribution to creditors
2 over four months because the transfer payment will not be made until the
3 Order Confirming plan becomes final and is not subject to appeal.
4 Appellee relates that the creditors have been waiting over four years for
5 payment of allowed claims since Spokane Receway Park filed for Chapter
6 11 Bankruptcy. Finally, administrative claims continue to increase
7 dramatically as a result of having to respond to meritless appeals.

8 Dismissal is within the district court's sound discretion.
9 *Telesphere Communications, Inc. V. 900 Unlimited, Inc.*, 177 F.3d 612, 616
10 (7th Cir.1999). Among the matters to be considered are the danger of
11 prejudice to the debtor, the length of the delay and its potential impact
12 on the bankruptcy proceedings, and the reason for the delay, including
13 whether it was within the reasonable control of the movant and whether
14 the movant acted in good faith. *Pioneer Inv. Services Co. v. Brunswick*
15 *Associates Ltd. Partnership*, 507 U.S. 380, 395 (1993). The Court
16 concludes that Appellant has failed to meet deadlines in the bankruptcy
17 court and has attempted to justify the delay with reasons that are not
18 meritorious and have resulted in an unnecessarily prolonged bankruptcy
19 proceeding. Considering the critical factors set forth in *Pioneer*, the
20 Court finds for Appellee. Additionally, equitable considerations do not
21 favor continuation of this appeal in light of the history of this
22 litigation. Accordingly,

23 **IT IS HEREBY ORDERED** that Appellee's Motion to Dismiss Appeal and
24 Motion to Expedite, **Ct. Rec. 15**, is **GRANTED**. It is further ordered that
25 the case be remanded to the Bankruptcy Court for further proceedings.

26 **IT IS SO ORDERED.** The District Court Executive is directed to enter

1 this order, provide copies to counsel and the Clerk of the
2 Bankruptcy Court, and close this file.

3 **DATED** this 3rd day of September, 2010.

4 ***s/Lonny R. Suko***

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6 LONNY R. SUKO
7 Chief United States District Judge
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